

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

CASE NO. 4:19 CR 228 (Judge Mazzant)

UNITED STATES OF AMERICA,

vs.

BYRON ALCIDES BERGANZA ESPINA,

Defendant.

DEFENDANT'S RESPONSE IN OPPOSITION TO THE GOVERNMENT'S
MOTION TO CONSOLIDATE THIS CASE WITH UNITED STATES V. BYRON JOSE
BERGANZA ROQUE, 2019 CR 320

I, Alexei Schacht, an attorney admitted to practice law before this Court, hereby declares that the following is true under the penalty of perjury:

1. This is a response in opposition to the Government's Motion to consolidate the case with *United States v. Berganza Roque*, 2019 CR 320, in which my client's son is basically charged with having conspired to sell drugs with his father, my client.
2. The motion should be denied because were the defendant and his son, were they to be tried together would have antagonistic defenses.
3. "Defenses are antagonistic if they are mutually exclusive or unreconcilable, that is, if the core of one defendant's defense is contradicted by that of another." *United States v. Rojas-Martinez*, 968 F.2d 415, 419 (5th Cir.), *cert. denied*, ___ U.S. ___, 113 S. Ct. 828, 121 L. Ed.

2d 698 (1992); *see also Romanello*, 726 F.2d at 177; *United States v. Berkowitz*, 662 F.2d 1127, 1134 (5th Cir. 1981).

4. I have spoken to my co-counsel, Jeffrey Cohn, and he has told me that his client will testify at his trial. He has also told me that when he testifies he will make statements that implicate my client in the narcotics business – in other words that the defendant is guilty.
5. Nothing could be more antagonistic than if my client's son basically implicates him in front of the jury.

WHEREFORE, the Defendant would respectfully request that this Honorable Court deny the Government's motion. I declare under the penalty of perjury that the foregoing is true and correct.

Respectfully submitted,



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Dated: September 22, 2021

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of September, 2021 I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

Respectfully submitted,

/s/ Alexei Schacht

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